

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 177 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

VALLABH GLASS WORKS LTD

Appearance:

MR MANISH R BHATT with MR MIHIR JOSHI for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 06/03/98

ORAL JUDGMENT

Per: R.K.Abichandani, J.

The Income Tax Appellate Tribunal, Ahmedabad, has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act 1961"):

"Whether in computing the capital employed for the purpose of relief under sec.80J of the I.T.Act, 1961, the amount representing uninstalled machinery should be taken into consideration?"

2. The matter relates to Assessment Year 1975-76.

The Assessee is a Company engaged in Glass industry. In its Return filed for the relevant previous year, the assessee took up a stand that the value of uninstalled machinery should also be taken into consideration in working out the capital employed for the purpose of granting deduction under Section 80J of the Act 1961. The I.T.O. however did not accept this contention. In Appeal, the C.I.T. (Appeals), directed the I.T.O. to consider the uninstalled machinery as part of the assets for the purpose of computation of capital by allowing relief under Section 80J of the Act 1961. In the Appeal preferred by the Revenue against that order, the Tribunal relying upon the decision of this Court in C.I.T. v. Cibatul Ltd., reported in 115 I.T.R. 879, upheld the order of the C.I.T. (Appeals).

3. In Cibatul Ltd. (Supra), this Court, while considering an identical question referred to it, held that the amount representing uninstalled machinery was required to be taken into consideration for the purpose of relief under Section 80J of the Act, 1961. The Court referred to the provisions of Rule 19A(2)(ii) and observed that the concept of use of the plant did not arise under that provision and it was only the question of assets acquired by purchase by the assessee and not entitled to depreciation that was relevant. It was held that both the requirements of clause (ii) of Rule 19A(2) were satisfied in such case, where the plant or machinery, though purchased, was not installed. Under sub rule 2 of Rule 19A, the aggregate of the amounts representing the values of the assets as on the first day of the computation period of the undertaking to which Section 80J applies is required to be first ascertained in the manner set out in the sub rule (2) and in sub clause (ii) in the case of assets acquired by purchase not entitled to depreciation their actual cost to the assessee is to be taken. The decision in Cibatul Ltd. was followed in C.I.T. v. Gujarat State Fertilizer Company Ltd., reported in 219 I.T.R. 550. Following the decision of this Court in Cibatul's case, we hold that in computing the capital employed for the purpose of relief under Section 80J of the Act, the amount representing uninstalled machinery should be taken into consideration.

The question is therefore answered in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani, J.)

(Kundan Singh, J.)

(sunil)